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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF NEVADA**

12 PAMELA LEWIS,

13 Plaintiff,

14 vs.

15 Case No.: 2:15-cv-01368

16 CASA DI AMORE LLC; JEFF SCHWARTZ,
17 individually and dba CASA DI AMORE,
18 LLC; MICHAEL CAMPAGNO, individually
19 and dba CASA DI AMORE; DOES 1-100 and
20 ROE ENTITIES 1-100,

21 Defendants.

22 **MOTION AND MEMORANDUM OF LAW FOR AN EXTENTION OF TIME FOR THE**

23 **DEFENDANTS' TO RESPOND TO PLAINTIFF'S COMPLAINT**

24 Pursuant to Federal Rule of Civil Procedure 6(b), Defendants, CASA DI AMORE LLC;
25 JEFF SCHWARTZ; MICHAEL CAMPAGNO and CASA DI AMORE, by and through their
attorney, TODD M. LEVENTHAL, ESQ., respectfully submit this Motion for an Extension of
Time for the Defendantsø to respond to Plaintifføs Complaint to and including November 9,
2015. Plaintiff has consented to an extension to and including October 11, 2015, since then
Defendantsøhave been in communication with Plaintiff regarding negotiations.

BACKGROUND

On July 17, 2015, Plaintiff filed its Complaint. The Complaint asserts as follows:

(1) a claim that this Court has original jurisdiction over the federal overtime wage claims herein pursuant to Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), which states "An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by anyone or more employees for and in behalf of himself or themselves and other employees similarly situated." This Court also has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331. (2);

(2) a claim that this Court has supplemental jurisdiction under 28 U.S.C. § 1337 over Plaintiff state law wage and hour claims because those claims derive from a common nucleus of operative fact regarding Defendants' failure to pay wages and overtime compensation.;

(3) Under Nevada Revised Statutes, N.R.S. §608.040(1) If an employer fails to pay:(a) Within 3 days after the wages or compensation of a discharged employee becomes due; or (b) On the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit or was discharged until paid or for 30 days, whichever is less.;

(4) The State of Nevada has created a cause of action for such wages and attorney's fees, pursuant to NRS 608.140, entitled "Assessment of attorney's fees in action for recovery of wages," which states "Whenever a mechanic, artisan, miner, laborer, servant or employee shall have cause to bring suit for wages earned and due according to the terms of his employment, and shall establish by decision of the court or verdict of the jury that the amount for which he has brought suit is justly due, and that a demand has been made, in writing, at least 5 days before suit was brought, for a sum not to exceed the amount so found due, the

court before which the case shall be tried shall allow to the plaintiff a reasonable attorney fee,
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in addition to the amount found due for wages and penalties, to be taxed as costs of suit." This
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provision creates a private cause of action for wages alleged to be due with or without sending
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a demand letter. Plaintiff sent a demand letter to Defendants on July 4, 2015, of which
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Defendant Campagno acknowledged receipt, telling Plaintiff on July 4, 2015, in a phone
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message, to not ever call him again;
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(5) The State of Nevada has also created a cause of action for minimum wages and
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attorney's fees, pursuant to Section *16C* of the Article 15 of the Nevada State Constitution which
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states "An employee claiming violation of this section may bring an action against his or her
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employer in the courts of this State to enforce the provisions of this section [Section 16 of the
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Nevada State Constitution] and shall be entitled to all remedies available under the law or in
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equity appropriate to remedy any violation of this section, including but not limited to back
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pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to
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enforce this section shall be awarded his or her reasonable attorney's fees and costs.";

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(6) Venue is proper in this court because Plaintiffs and Defendant's principal place of
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business is located within this Judicial District and Plaintiffs worked and wages were earned at
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Las Vegas, Clark County, Nevada. See 28 U.S.C. § 1331(b).

After several communications with Patricia A. Marr, Esq. to try and settle the matter and
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requesting time to Answer it was agreed by both that she would extend time to Answer to October 11,
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2015, with the understanding that the Parties would communicate with each other regarding negotiations
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in the matter. Since that date Counsel has been in contact with Mrs. Marr, however, no negotiation were
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reached.

Counsel was advised by Mrs. Marr's office that she would be out of the office and when she
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returned she would contact undersigned counsel. Counsel was surprised to see the 3 day Notice of
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Default as he was told that communication would be made prior to any filings.

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2 **REASONS FOR GRANTING THE REQUESTED EXTENSION**

3 This Court has discretion to grant a motion to extend the time in which to file a
4 responsive pleading for good cause. Fed. R. Civ. P. 6(b)(1); Woodruff v. McPhie, 593 F. Supp.
5 2d 272, 276 (D.D.C. 2009); Beal v. District of Columbia, 545 F. Supp. 2d 8, 14 (D.D.C. 2008).
6 The need to provide adequate time for a party to obtain counsel, and for counsel to become
7 sufficiently familiar with a matter to give informed advice, provides good cause for such an
8 extension of time. See Sherrod v. Breitbart, 720 F.3d 932, 937 (D.C. Cir. 2013) (noting that court
9 granted extension of time where defendant had only recently obtained counsel); Williams v.
10 Vilsack, 620 F. Supp. 2d 40, 46 (D.D.C. 2009) (similar).

11 Accordingly, the Individual Defendants respectfully request an extension to answer,
12 move, or otherwise respond to the Plaintiff's Complaint to November 9, 2015. Counsel needed
13 adequate time to review the matter, advise their clients, and respond to the complaint. The
14 Defendants have not requested any previous extension, and a granting of the extension will not
15 impact any other existing Court deadlines.

16 WHEREFORE, the Defendants respectively request that the Court grant their motion and
17 grant an extension of time up to and including November 9, 2015, to file a responsive pleading to
18 the Complaint. A proposed Order providing for this extension is submitted with this Motion.

19 Respectfully submitted,

20 Dated this 9th day of November, 2015.

21 Todd M Leventhal
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CERTIFICATE OF SERVICE

When all Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that on November 9, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States District Court by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Todd M. Leventhal
Signature

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEVADA

PAMELA LEWIS,

Plaintiff,

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Case No.: 2:15-cv-01368

CASA DI AMORE LLC; JEFF SCHWARTZ,
individually and dba CASA DI AMORE,
LLC; MICHAEL CAMPAGNO, individually
and dba CASA DI AMORE; DOES 1-100 and
ROE ENTITIES 1-100,

ORDER

Defendants.

Upon consideration of the Motion and Memorandum of Law for an Extension of Time
for the Defendants to Respond to Plaintiff's Complaint, it is hereby:

ORDERED that the Defendants' Motion for an Extension of Time to Answer Complaint
be, and hereby is, GRANTED; and it is further

ORDERED that the Defendants have until November 9, 2015, to file a responsive
pleading to Plaintiff's Complaint.

SO ORDERED.



RICHARD F. BOULWARE, II
United States District Judge

DATED this 13th day of November, 2015.